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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, submitted pursuant to Commission on Human Rights resolution 1997/23

Addendum

Recent developments in Malaysia

1. In paragraph 109 of his report (E/CN.4/1998/39), the Special Rapporteur stated that his application for leave to appeal to the Federal Court (the apex appellate court of Malaysia) from the decision of the Court of Appeal dismissing his appeal to that court had been fixed for hearing on 16 February 1998. In the present document, the Special Rapporteur wishes to report on the outcome of the hearing of that application.

2. His application was heard on 18 and 19 February 1998 by a panel of three judges presided over by the President of the Court of Appeal. The President was the same judge who had earlier refused the Special Rapporteur's application to the Court of Appeal for a stay of execution on the judgement of the High Court referred to in paragraph 107 of the report. He also sat on the Court of Appeal which affirmed the award of RM 10 million (US$ 2.5 million) which decision was referred to and commented upon in the impugned article. The businessman who was awarded that sum is currently the plaintiff in one of the four suits against the Special Rapporteur for defamation arising from the impugned article. Another judge who heard the appeal on 18 February was one of the three judges in the controversial Ayer Molek case (see E/CN.4/1996/37, paras. 158-160) which was extensively commented on in the impugned article.

3. At the conclusion of the hearing, the Federal court, by a unanimous oral decision, dismissed the application with costs. In dismissing the application, the Presiding Judge made a statement to the effect that the Special Rapporteur was neither a sovereign nor a diplomat but, in layman's terms, an "unpaid, part-time provider of information".

4. The immunity determined and asserted by the United Nations Secretary-General was from "legal process of every kind" in respect of words spoken or written by the Special Rapporteur in the course of the performance of his mission. Despite cogent authorities cited to the Court to the effect that the issue goes to jurisdiction and therefore should be decided in limine, the Court agreed with the lower courts that the issue of immunity from legal process would be decided at the end of the process.

5. The application was for leave to admit the appeal as one with merit for appeal. Yet it was summarily disposed of. There were many admitted previously with far less merit than the present one.

6. The Special Rapporteur has exhausted all his legal remedies on the issue of immunity before the domestic courts of Malaysia. He is now exposed to legal process of full trials on the four defamation suits for a total sum of RM 280 million (US $70 million).

Observations

7. The decisions of the Federal Court and of the lower courts were against the weight of authorities and do not accord with international law. The courts failed and/or refused to recognize the United Nations jurisprudence on the issue. They defied the authority of the Secretary-General of the United Nations and, moreover, both the Court of Appeal and the Federal Court ignored the 1989 Advisory Opinion of the International Court of Justice in the Mazilu case. There was a virtually total disregard for the United Nations and its procedures.